



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *Red*
DATE: February 9, 2000
SUBJECT: MUR 4885- General Counsel's Report #2

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

SENSITIVE

☒

NON-SENSITIVE

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72 Hour TALLY VOTE

☒

24 Hour TALLY VOTE

☐

24 Hour NO OBJECTION

☐

INFORMATION

☐

DISTRIBUTION

COMPLIANCE

☒

Open/Closed Letters

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MUR

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DSP

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STATUS SHEETS

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Enforcement

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Litigation

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PFESP

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RATING SHEETS

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AUDIT MATTERS

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LITIGATION

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ADVISORY OPINIONS

☐

REGULATIONS

☐

OTHER

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FEB 9 2000

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

In the Matter of

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MUR 4885

2000 FEB -9 P 2:42

Laredo National Bank

Gary G. Jacobs

SENSITIVE

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

Enter into conciliation with Gary G. Jacobs and Laredo National Bank, take no further action with respect to Mrs. Gary Jacobs, and approve the attached conciliation agreement.

II. BACKGROUND

This matter was generated by a referral from the Office of the Comptroller of the Currency. On March 16, 1999, the Federal Election Commission ("the Commission") found reason to believe that Gary G. Jacobs knowingly and willfully violated, and that Laredo National Bank ("the Bank") (collectively, "Respondents") violated, 2 U.S.C. §§ 441b(a) and 441f in connection with a contribution Mr. Jacobs made to the Republican National Committee ("RNC") which was reimbursed by the Bank. Mr. Jacobs is the president of the Bank. On that same date, the Commission also found reason to believe that Mrs. Gary G. Jacobs violated 2 U.S.C. § 441f. The Commission also authorized Subpoenas for Production of Documents and Orders to Submit Written Answers to Gary G. Jacobs, the Bank and the RNC.¹

Both the RNC and counsel for the Respondents responded to the Commission's subpoenas and orders, and counsel for the Respondents requested pre-probable cause conciliation. Attachments 1 and 2. Following review of the discovery responses, this Office spoke with counsel for Respondents who agreed to clarify certain interrogatory responses and

¹ The Commission determined to make the Republican National Committee ("RNC") a non-respondent witness.

questions raised by the documents produced. Counsel sent a supplemental response, including additional affidavits, responding to the request for additional information. Attachment 3. As discussed below, based on the information submitted during the investigation, *this Office* recommends that the Commission enter in pre-probable cause conciliation with the Respondents.

III. DISCOVERY RESPONSES

According to the RNC and Respondents, Mr. Jacobs' \$15,000 contribution to the RNC was the result of at least two solicitations from RNC fundraisers. The first was a phone call to Mr. Jacobs in the winter of 1994 from RNC fundraiser Georgette Mosbacher requesting that Jacobs contribute \$150,000 for the February 1995 Official Republican Inaugural Gala ("the Gala"), an amount which would earn him a title of Deputy Chairman of the event. According to an affidavit submitted by Mr. Jacobs, he told Mosbacher that he had already made sufficient political contributions for the year and did not wish to make additional ones. According to Jacobs:

Ms. Mosbacher indicated that a corporate gift could be made by the Bank. I related that I believed that banks were treated differently than other corporations, and that banks could not make contributions to a political event. Ms. Mosbacher apparently believed that I was incorrect in that regard and said she could provide me with materials showing that other banks were making such contributions. I requested materials regarding this issue and the gala . . .

Attachment 2 at 7.

Around December 20, 1994, Mr. Jacobs received a Federal Express package of materials from Ms. Mosbacher. That package included a memo from Mosbacher to Jacobs expressing hope that he would become a Deputy Chairman for the Inaugural Gala and enclosures that included a fact sheet of benefits available to members of the Inaugural Leadership Committee for raising certain levels of funding, a summary of contribution laws, a list comparing corporate

contributions to the RNC and DNC through June 1994, and form letters Jacobs could send to those he contacted who agreed to help raise funds at a January 1995 "Phone Day" pledge drive. Attachment 2 at 101, 50, 104-105, 49, 58-97 and 102-103. The RNC/DNC contribution list includes the names of what appear to be national banks. See e.g., Attachment 2 at 71 and 78. However, it is unclear from the list alone whether the actual donors were the banks themselves or bank holding companies or wholly-owned subsidiaries.

Mosbacher's phone call was apparently followed by a second call to Jacobs in January 1995 by RNC fundraiser Wayne Berman. According to both Jacobs and the RNC, Jacobs agreed to make a \$15,000 contribution to the Gala. Attachment 2 at 7 and Attachment 1 at 1-2.²

Documents produced by Respondents show that Jacobs received at least two reminders from the RNC before he actually made the contribution.³ Attachment 2 at 19-20 and Attachment 3 at 13. The second of these was a March 27, 1995 letter to Jacobs at the Bank from RNC Chairman Haley Barbour thanking him for his commitment of \$15,000 and asking that it be forwarded as soon as possible. Attachment 3 at 13. The bottom of the March 27th letter contained a disclaimer that read, "Paid for by the Republican National Committee and the Republican National State Elections Committee. Only those contributions which do not fall under the limitations and prohibitions of the Federal Election Campaign Act will be used by the Republican National State Elections Committee."

² The RNC's response does not mention the December phone call by Mosbacher. It affirmatively states that Jacobs' \$15,000 contribution resulted from a solicitation by Berman at a January 1995 "Phone Day" pledge drive for the Gala, the same "phone day" referenced in Mosbacher's December memo to Jacobs. Attachment 1 at 1-2. RNC source documents indicate that Berman was credited with the contribution. Attachment 1 at 2 and 9. In contrast, Jacobs does not remember a second specific phone call but states in his affidavit that "apparently" there was a follow-up phone solicitation in January 1995 and he "apparently agreed generally" to a \$15,000 contribution.

³ Although he agreed to contribute to the Gala, Jacobs avers that neither he, his wife nor anyone from the Bank went to it.

According to Respondents' supplemental response, sometime after receiving the letter and leaving on a trip to Arizona, Jacobs apparently made a handwritten notation on the letter, "LNB expense," initialed it, left it in his office in a "pending" file with no instructions that it be sent to the Bank's Control department for payment, and left on the trip. See Attachment 3 at 12.⁴ According to Jacobs, even after he had received the Federal Express package from the RNC containing the list showing apparent contributions from banks to the RNC and DNC, he still had doubts about the permissibility of the Bank's making political contributions. Attachment 3 at 9. Notwithstanding these doubts, he acknowledges that he did make the "LNB expense" notation on the Barbour letter. Id. When asked to explain the basis for his belief that banks were different from other corporations and could not make political contributions, Respondents stated in their supplemental response that Jacobs "has long been aware of a general prohibition against national banks making political contributions of any kind." Attachment 3 at 4.

According to Mr. Jacobs, while he was in Arizona his long-time secretary, Pati Benavides, told him in a phone call that someone was pushing for a check. Jacobs states in his affidavit that his discussion with Ms. Benavides was "probably" prompted by a phone call from someone at the RNC or calling on behalf of the RNC. Attachment 2 at 7. For her part, Ms. Benavides avers in an affidavit that while she does not "exactly remember the specific

⁴ In his initial affidavit, Jacobs acknowledged that the handwritten "LNB Expense" notation on the March 27 Barbour letter was his but stated that "he had no specific recollection" of it, and that "it is possible" he wrote it after he returned from his Arizona trip and after the Bank's accounting officer had written a second notation on the letter approving a bank reimbursement. Attachment 2 at 9. However, after this Office pointed out to counsel by letter that other documents produced by Respondents showed that Jacobs' notation had to have been written before the Bank's accounting department approved the reimbursement on April 4, Respondents stated in a supplemental response that "people in Mr. Jacobs' office believe that . . . before he left for Arizona, he initialed the Barbour letter 'LNB expense' and left it in his office with no instructions" The supplemental response also states that Jacobs believes that "at some point" he initialed the Barbour letter, left it in his pending files and left "on a trip." Attachment 3 at 9.

circumstances" surrounding the RNC solicitation, Jacobs "might have" received a phone call on April 3 from someone at the RNC pushing him to send the contribution to the RNC.

Attachment 2 at 13. Jacob avers in his affidavit that he "must have authorized" Ms. Benavides to get a personal check for the contribution from his executive assistant Ada Guzman who had authority to sign checks drawn on, and make deposits into, his personal account at the Bank.

Attachment 2 at 8. Jacobs elaborates further in his affidavit:

I believe the most likely circumstance is that I told Ms. Benavides to see if the Bank could contribute to the RNC, and if not, to have Ms. Guzman issue a check from my personal account. The most probable sequence is that after I had authorized the issuance of my check, it was signed by Ms. Guzman and mailed that day to the RNC. After the check was sent, someone concluded, in part or whole, from the Barbour letter that the \$15,000 contribution was a permissible Bank expense."

Attachment 2 at 8.

In their affidavits, both Benavides and Guzman attest that, based on a review of the check, Benavides prepared a \$15,000 check to the RNC, dated April 3, 1995, drawn on Jacobs' personal account and Guzman signed it. Attachment 2 at 12 and 13. A deposit slip produced by the RNC shows that it deposited the check on April 13, 1995. Attachment 1 at 5.

Documents produced by Respondents show that on the same day she prepared the check, April 3, Ms. Benavides completed and signed a Bank disbursement request for "[r]eimbursement of contribution to the 1995 Official Republican Inaugural Gala." Attachment 2 at 15; see also Attachment 3 at 30. Gary Jacobs is designated as the intended payee and boxes checked on the form direct that an expense check be issued and delivered to Benavides. Across from her signature approving the disbursement, Benavides typed, "(per Mr. Jacobs instructions)"(sic). Respondents indicate that the form was accompanied by the March 27 Barbour letter containing Jacobs' initialed "LNB expense" notation. Attachment 3 at 8, 27-28. In her initial affidavit, Ms.

Benavides states that she does not "exactly remember the specific circumstances" surrounding the request for reimbursement to Jacobs, but that she "must have found the March 27 Barbour letter in his pending correspondence and after looking at it, took it upon myself to type the reimbursement form without checking with him to see if that is what he intended to do."

Attachment 2 at 13. When asked through a follow-up letter why Benavides had typed "per Mr. Jacobs instructions" on the form, Benavides submitted a second affidavit repeating her earlier statement and adding the following:

I do not recall the specific reason why I typed "Per Mr. Jacobs instructions" on the Disbursement Request. It is possible that it was because I saw his notation on the letter. Again, I saw his initials on the letter but never asked him what he wanted me to do."

Attachment 3 at 32.

Hotel invoices produced by Respondents to establish that Mr. Jacobs was in Arizona on April 3 and 4, the dates the Jacobs' check to the RNC was prepared and the Bank reimbursement was approved, reflect long distance phone calls on both days to Mr. Jacob's Laredo Bank phone number. Attachment 2 at 110.

A Control Department stamp on the disbursement request form shows that it was received in that department on April 3, the same day Benavides prepared the RNC check. Attachment 2 at 15. Carlos Gutierrez, III, the Bank Vice President and Accounting Officer, reviewed the request. In his affidavit, Mr. Gutierrez acknowledges that he routinely reviews and processes expense reimbursement requests and specifically states that he would have sought the approval of Javier Trevino, a Senior Vice President, before processing the reimbursement. Attachment 2 at 11. Gutierrez further identifies his own handwritten notation on a second copy of the March 27 Barbour letter produced by the Bank and avers that he remembers writing it and that it accurately

reflects his discussion with Mr. Trevino. Id. and Attachment 2 at 25. Gutierrez's notation reads, "Per Javier Trevino, OK to pay based on comment at bottom of this letter"⁵ and is followed by his initials. In their supplemental response, Respondents indicate that the reason the reimbursement was reviewed by Gutierrez's supervisor was because Gutierrez normally refers to Trevino, or in his absence, Toribio Saucedo, the Bank's Chief Financial Officer ("CFO"), any type of transaction that he considers unusual because of the amount involved or because of the nature of the payment, such as its non-recurring nature. Attachment 3 at 10.

In an affidavit submitted by Gutierrez's supervisor Javier Trevino, Trevino states that he remembers having reviewed the legend (disclaimer) at the bottom of the March 27th Barbour letter and believed it permitted the bank reimbursement "since contributions which did not 'fall under the limitations and prohibitions of the Federal Election Campaign Act' could be made."⁶ Attachment 2 at 10. Trevino further states that:

It is my belief that I would have contacted an attorney for the bank, Mr. Abe Wilson, or an associate in his office, to ensure that this reimbursement was permissible. I do not presently remember a specific discussion of this transaction with counsel.

Id.

Additionally, both Messrs. Gutierrez and Trevino aver in their respective affidavits that they had no knowledge in April 1995 that the reimbursement may have been prohibited by law. Attachment 2 at 10 and 11.

⁵ The "comment on the bottom of this letter" is a reference to the disclaimer on the March 27 Barbour letter quoted on page 3 of this report.

⁶ Mr. Trevino's statement is somewhat confusing since the Act prohibits national banks from making contributions or expenditures in connection with any election to any political office, including state and local offices. The RNSEC, which the disclaimer notes will use contributions that "do not fall under the limitations or prohibitions of the Act," finances state elections.

Despite Mr. Trevino's belief that he consulted with counsel regarding the permissibility of the reimbursement, Gutierrez's notation of his conversation with Trevino references only the form disclaimer on the Barbour letter and Respondents' initial response notes that neither Mr. Wilson, an outside counsel to the bank, nor any associate in his office, has any recollection of such a meeting or discussion. Attachment 2 at 4. Moreover, a 1998 fax cover letter from the Bank to New York counsel forwarding materials relating to the April 1995 reimbursement recites the Barbour letter disclaimer and notes that the Bank "used [it] as a basis to reimburse Gary" with no reference to any discussion with Mr. Wilson's law firm. Attachment 2 at 14.

The Bank reimbursed Jacobs for the RNC contribution by issuing an expense check dated April 4, 1995, payable to him. Attachment 2 at 27. Based on their review of the relevant document, Pati Benavides and Ada Guzman state in their affidavits that Benavides filled out a deposit slip for the expense check and gave it to Guzman to deposit into Jacobs' personal account. Attachment 2 at 13 and 12. A copy of the deposit slip, dated April 5, 1995, shows a \$15,000 deposit and written next to it "LNB Reimb. RNC." Attachment 2 at 29. The reimbursement check was deposited into Jacobs' personal account on April 5, 1995. See Attachment 2 at 28 and Attachment 3 at 18.

In their supplemental response, Respondents state that Mr. Jacobs first became aware that the Bank had reimbursed him for his April 1995 RNC contribution on February 24, 1998 when a bank examiner from the Office of Comptroller of Currency ("OCC") brought it to his attention in connection with an examination of the Bank. Attachment 3 at 7. Documents produced show that Jacobs, in turn, reimbursed the Bank on that day via a check drawn on his personal account at the Bank. Attachment 2 at 16 and 32. In a memorandum to Chief Financial Officer Toribio Saucedo enclosing his personal check, Jacobs states that the check is to reimburse the bank for an

“erroneous reimbursement to me in 1995 that I was unaware of until pointed out to me today” by the OCC. Attachment 2 at 26. Jacobs further wrote:

As I recall I was being pushed by someone on (sic) RNC that LNB could give. They insisted that it was legal for LNB, and I took the position it was not. I finally agreed to write a personal check and await their opinion on the legality of LNB’s ability.

Apparently, Pati authorized the reimbursement without consulting with me . . . probably because she saw my initials on the RNC letter.

However, I do recall getting an opinion letter that RNC was wrong and I believe I asked someone in my office to be sure that the check to RNC was mine and not LNB funds.

Attachment 2 at 26.⁷ He ended the memorandum by stating that he would check with his executive assistant, Ada Guzman, when she returned from vacation “to see if she can find my instructions that the contribution was personal and not LNB.”

A post-it note which Jacobs avers is “now” attached to an April 13, 1995 from Haley Barbour thanking him for his \$15,000 contribution could be the “instructions” that Jacobs referred to the memorandum accompanying his repayment to the Bank. In his initial affidavit, Jacobs suggests that the note shows that he was still unaware of the reimbursement at the time he received the thank-you letter. The note, written by Jacobs to his executive assistant Ada Guzman, reads:

Ada: I wrote a personal check to RNC but the RNC staff insists that it is legal for LNB to contribute! I told them I don’t think so but if they are correct, then I could be repaid by LNB. We should have a legal opinion in a file from Cleary or Abe.⁸ If I am correct & it must be personal, be sure that LNB is not to reimburse me. If I am wrong about the law and RNC is right, then OK.

⁷ Jacobs also wrote in the February 1998 memorandum that he could not verify whether he had previously reimbursed the Bank but was paying the Bank so as to leave no doubt as to his intentions.

⁸ When asked to explain the statement in Jacobs’ post-it note that “we should have a legal opinion in a file from Cleary or Abe,” Respondents replied, “[a]lthough Jacobs recalls that the Bank had sought legal clarification in this matter in the past, we are unable to find which law firm, if any, provided that clarification.”

Attachment 2 at 22; see also Attachment 2 at 99.

Ms. Guzman avers in her affidavit that she does not remember "speaking to Mr. Jacobs or receiving instructions from him regarding the check or the reimbursement." Attachment 2 at 12. Moreover, neither the letter nor note were included in the OCC's referral of this matter. Jacobs is careful in his affidavit to state that the post-it note is "now" attached to the April 13, 1995 letter but avers that he does not remember when it was written, when it was placed in the file or whether Ms. Guzman ever saw it. Attachment 2 at 9. Given these uncertainties, the note cannot be used to definitively establish that Mr. Jacob was unaware of the reimbursement as of a specific date.

Bank statements produced by Respondents raise the question as to whether Mr. Jacobs should have been aware earlier than 1998 that the bank had reimbursed him for his contribution to the RNC. The April 1995 bank statement for Mr. Jacobs' personal account reflects the deposit of the \$15,000 Bank reimbursement. Attachment 3 at 18-20. According to Respondents, all of Mr. Jacobs' expense checks are deposited into this account. The statement shows that \$73,823 in funds were deposited into the account in April 1995. The \$15,000 Bank reimbursement was the second largest deposit that month, and unlike others, was not a recurring deposit. Though these facts might suggest that Mr. Jacobs was, or should have been, alerted to the reimbursement soon after it occurred, Respondents state that the statements for the account are delivered to Ada Guzman, and Mr. Jacobs "seldom, if ever" reviews them. Attachment 3 at 7.

One document produced by Respondents shows that the Bank did in fact possess a legal opinion concerning contributions by national banks although it is dated two years after the Bank's reimbursement of Jacobs' contribution. This document may have been the opinion Jacobs referred to in his February 1998 note to the Bank's CFO accompanying his repayment.

This opinion, a May 29, 1997 letter from RNC Deputy Counsel Tom Percell Liddy to Jacobs, advised Jacobs that "federally chartered banks are prohibited from contributing to the RGA [Republican Governors' Association] through the Republican National State Elections Committee (RNSEC), the non-federal component of the RNC." Attachment 2 at 35. It went on to note some exceptions carved out in Commission advisory opinions that applied to holding companies and wholly-owned subsidiaries of federally chartered savings and loans associations and enclosed those opinions. Attachment 2 at 35-39. It appears that the opinion was requested by Jacobs, possibly in connection with a reimbursement of a \$5,000 contribution he made to the RGA. The apparent cover letter accompanying the opinion, dated June 26, 1997, and written by RGA Finance Chairman Wayne Berman, states: "[a]s promised, here is a letter from our legal department regarding your \$5,000 contribution to the RGA." Attachment 2 at 98. Berman advises Jacobs that "after reading the opinions," he should refer further questions to an RGA official or Liddy, the author of the May 1997 RNC opinion. A handwritten note on the cover letter in what looks to be Jacobs' writing, reads "was this bank or personal?"

While the 1997 RNC legal opinion shows that Jacobs became aware that a Bank reimbursement was impermissible months before he repaid the Bank, Respondents maintain that he was unaware of the Bank's 1995 reimbursement at this time. Moreover, there is no evidence in the current record that the bank officials involved in approving the 1995 reimbursement,

Accounting Officer Gutierrez and Senior Vice President Trevino, were aware of the RNC legal opinion.⁹

Although the 1997 cover letter from Berman with its handwritten notation suggests that Jacobs may have later inquired about a Bank reimbursement for another political contribution, Respondents maintain that the detailed examination by the OCC establishes that Laredo National Bank has never reimbursed Mr. Jacobs for any political contribution other than the one at issue. Attachment 2 at 6. Due to the OCC's own confidentiality concerns, this Office could not ascertain the scope of its examination of the Bank, except for an oral statement that when asked if there had been other reimbursements of political contributions, the Bank's CFO advised the OCC bank examiner that, to his knowledge, there had been no others. However, at this Office's request, Mr. Jacobs submitted a supplemental affidavit in which he attests that "to the best of my knowledge, and other than the reimbursement of April 4, 1995, I have never been reimbursed for past political contributions by either LNB or any other company."¹⁰ Attachment 3 at 14.

IV. ANALYSIS

There is no question that the Bank improperly reimbursed Bank President Gary Jacobs for a contribution he made to the RNC and therefore that Respondents violated 2 U.S.C. § 441b(a)

⁹ A post-it note attached to the RNC legal opinion and written to Jacobs by his secretary, Ms. Benavides, suggests that the Bank's CFO, Toribio Saucedo, may have been aware of the RNC legal opinion, or at least believed the Bank could not contribute to the RGA. Attachment 2 at 35; see also Attachment 3 at 11. That note reads, "Tori said the bank definitely cannot contribute. He thinks the holding company may be able to but he'd have to look into it?" Respondents maintain that Saucedo does not recall being consulted about the 1995 Bank reimbursement and none of the documents produced indicate that he was. Attachment 3 at 10.

¹⁰ The FEC contributor index confirms that Mr. Jacobs has made numerous contributions to federal political committees as far back as 1980.

and 441f. The only open question then is whether the Jacobs and/or the Bank knowingly and willfully violated the Act when the Bank reimbursed Jacobs for his personal contribution.¹¹

Respondents maintain that the Bank's reimbursement of Jacobs' contribution resulted from "inadvertent human errors" and that a knowing and willful finding is unwarranted because the Bank's reimbursement was made "without full knowledge of the facts and with a belief that the law permitted it." Attachment 2 at 5-6. They also point out that there were no attempt to hide or disguise the transaction, noting that the Bank's disbursement request form, available to bank regulators, clearly states the purpose as "[r]eimbursement of contribution to the 1995 Official Republican Inaugural Gala."

The current record leaves several unanswered questions. For example, if Jacobs, who had been Bank president for 20 years in 1995 and had assertedly never before received reimbursements for past contributions, "clearly remembers having doubts about the permissibility" of banks making political contributions, why did he then write "LNB expense" on the March 27 Barbour letter? Why didn't Jacobs' secretary check to see if the Bank could contribute to the RNC before issuing a personal check, as Mr. Jacobs believes he instructed her, rather than issuing a personal check and seeking reimbursement from the Bank on the same day? Additionally, why would the Bank's senior vice president rely so heavily on a form disclaimer to justify a type of reimbursement that he presumably had never been asked to make before? Did he, in fact, consult counsel as he believes he would have done, although there is no record to

¹¹ The Commission found reason to believe that only Jacobs knowingly and willfully violated the Act. That finding was apparently based on the notation on the Bank disbursement request form that a reimbursement was requested "per Mr. Jacobs' instructions" and this Office's belief at the time that Gutierrez's notation on the March 27 Barbour letter, "per Javier Trevino: OK to pay based on comments on bottom of letter," was made by Jacobs and showed his direct involvement in the reimbursement.

support it, or did he fail to take this important step? Did the Bank in fact have a relevant legal opinion in-house from an outside counsel as referenced in Jacob's post-it note "now" attached to the April 13, 1995 Barbour thank you letter, and if so, why did no one consult it? When, in fact, was that post-it note written? Given the passage of time since the events at issue, the sworn statements by those most directly involved that they have little specific recollection of these events, and the fairly comprehensive efforts by Respondents to produce the documentary evidence that does exist, it is unlikely that these questions can be satisfactorily answered.

Though one could question whether the form disclaimer on Barbour's letter provided a reasonable basis for a belief that the law permitted the reimbursement or whether Bank officials approving disbursements should have been familiar with relevant FECA law applying to national banks, there is no direct evidence in the record that the Bank officials who approved the reimbursement knew at the time that a reimbursement was illegal. Indeed, those officials have sworn that they did not know the reimbursement was prohibited by law at the time. Moreover, Ms. Benavides has sworn in her affidavit that she must have found the March 27 Barbour letter with Jacobs' initialed notations in Jacobs' pending correspondence and taken it upon herself to prepare the reimbursement form without consulting Jacobs. Additionally, Respondents have stated that Mr. Jacobs was unaware of the reimbursement until the OCC discovered it and that he rarely, if ever, reviewed the bank statements for his personal account. Given these facts, this Office believes there is insufficient evidence to sustain a knowing and willful finding against Jacobs or to recommend a knowing and willful violation against the Bank. As for the findings of 441b and 441f violations against Mr. Jacobs, this Office believes his "LNB expense" notation on the Barbour letter, and the fact that his long-time secretary submitted the reimbursement request noting that it was "per Mr. Jacobs' instructions" on the same day as Jacobs instructed her to

prepare a personal check, provide a sufficient basis on which to conciliate a pre-probable cause agreement.

V. DISPOSITION OF RTB FINDING AGAINST MRS. GARY JACOBS

The Commission's reason to believe finding against Mrs. Jacobs was based on the RNC's reporting of the \$15,000 contribution from Jacobs. The RNC attributed \$7,500 of the contribution to Mr. Jacobs and \$7,500 to Mrs. Jacobs. The RNC does not address its reporting of the contribution in its discovery response. However, a review of Mr. Jacobs' April 3, 1995 contribution check shows an additional signature under Gary Jacobs' purported signature on the contribution check. Attachment 1 at 6. It appears that the RNC erroneously thought both Jacobs and his wife signed the check. In fact, according to Respondents, Jacobs' executive assistant, Ada Guzman, who had signatory authority on Mr. Jacobs' personal account, signed both Mr. Jacobs' name and under it, the phrase "by A.M. Guzman." Accordingly, this Office recommends that the Commission take no further action and close the file as to Mrs. Gary Jacobs.

VI. DISCUSSION OF CONCILIATION AGREEMENT

VII. RECOMMENDATIONS


1. Enter into conciliation with Laredo National Bank and Mr. Gary G. Jacobs prior to a finding of probable cause to believe.
2. Take no further action with regard to a violation of 2 U.S.C. § 441f by Mrs. Gary G. Jacobs.
3. Approve the attached proposed conciliation agreement and the appropriate letters.

Lawrence M. Noble
General Counsel

Date

2/9/00

BY:


Lois G. Lerner
Associate General Counsel

Attachments

1. RNC response to Commission's subpoena and order
2. Gary Jacobs and Laredo National Bank response to Commission's subpoena and order
3. Jacobs and Bank supplemental response to subpoena and order
4. Proposed Conciliation Agreement

Staff assigned: Dawn M. Odrowski
Karen White



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARY W. DOVE/VENESHE FEREBEE-VINES
COMMISSION SECRETARY

DATE: FEBRUARY 10, 2000

SUBJECT: MUR 4885 - General Counsel's Report #2
dated February 9, 2000

NW

The above-captioned document was circulated to the Commission
on Wednesday, February 09, 2000.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Elliott	—
Commissioner Mason	<u>XXX</u>
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Thomas	<u>XXX</u>
Commissioner Wold	—

This matter will be placed on the meeting agenda for Tuesday,
February 15, 2000. Please notify us who will represent your Division before
the Commission on this matter.